

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-213245

DATE: October 25, 1983

MATTER OF: Elevator Electric Corporation

DIGEST:

A bid not accompanied by a required bid guarantee must be rejected as nonresponsive, absent circumstances not relevant here, even where omission of the guarantee resulted from the bidder's confusion over the bid guarantee requirement.

Elevator Electric Corporation (EEC) protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. 665-3-84, issued by the Veterans Administration (VA) for elevator maintenance services. We summarily deny the protest.

VA apparently rejected EEC's bid (the low bid received) as nonresponsive because it did not include a required 20 percent bid guarantee. The IFB warned bidders that the failure to submit a proper guarantee "may be cause for rejection of the bid." EEC explains it omitted the guarantee because it was confused by VA's use of the term "bid guarantee," which it views as a type of performance bond submitted only after award. It believes VA instead should have used the term "bid bond" to describe this requirement and, apparently, that it should not be penalized for VA's failure to do so. EEC further points out that the IFB stated only that a bid "may" be rejected if not accompanied by the required guarantee, not that it would in fact be rejected.

There is nothing unclear about the term "bid guarantee." This term refers to any firm commitment accompanying a bid as assurance that a bidder will, upon acceptance of its bid, execute the necessary contract documents and submit any required performance bonds. Federal Procurement Regulations (FPR) § 1-10.102-2. A "bid bond" is one form of bid guarantee, as are postal money orders, certified checks and other similar instruments. The bid guarantee requirement here could have been satisfied by submission of any of these instruments. If,

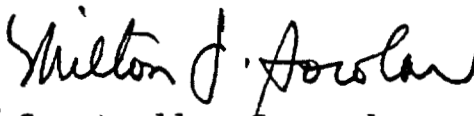
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upon receiving the solicitation, EEC nonetheless believed the bid guarantee requirement was unclear, it should either have sought clarification from the contracting officer or protested the matter prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1983).

A contracting officer must reject as nonresponsive a bid which does not include a required bid guarantee, except where it is the only bid received or the guarantee is received late but is acceptable under the rules for considering late bids. FPR § 1-10.103-4. The conditional language cited by EEC ("may be cause for rejection") takes into account the two exceptions under which the absence of a required bid guarantee will not render a bid nonresponsive. Since neither exception applies here, VA properly rejected EEC's bid as nonresponsive. See Schneider Security Agency, Inc., B-206083, March 4, 1982, 82-1 CPD 202.

EEC also seems to argue that the bid guarantee requirement should be waived in this instance because acceptance of its bid would result in cost savings to the government. A solicitation provision calling for a bid guarantee is a material requirement, however, and as such cannot be waived. 38 Comp. Gen. 532 (1959). It long has been our position, furthermore, that the public interest in strictly maintaining the competitive bidding procedures required by law outweighs any pecuniary advantage which the government might gain in a particular case by a violation of those procedures. William D. Walston & Associates, B-211669, May 17, 1983, 83-1 CPD 528.

The protest is summarily denied.

for 
Comptroller General
of the United States